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C O N F I D E N T I A L SECTION 01 OF 02 JAKARTA 013372

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TAGS: [PREL](#) [PGOV](#) [KJUS](#) [MARR](#) [ID](#)
SUBJECT: YUDHOYONO ALLEGEDLY APPROVES TRYING SOLDIERS IN
CIVILIAN COURTS

Classified By: Political Counselor Marc L. Desjardins, for reasons 1.4
(b) and (d).

¶1. (C) Summary: According to media reports citing Indonesian Justice and Human Rights Minister Awaluddin, President Yudhoyono has signaled his support for draft legislation which would clear the way for military personnel charged with criminal acts to be tried in civilian courts. The report, if accurate, would go a long way towards addressing widespread concerns about the Indonesian military's historical impunity and mark a step forward in the reform of the Indonesian military (TNI) in accordance with Indonesian expectations. SBY's alleged endorsement of the legislation would remove the last major hurdle to the bill and allow its passage by the Indonesian House of Representatives (DPR) as early as January, 2007. Embassy contacts familiar with deliberations surrounding the bill, however, questioned the accuracy of the Justice Minister's report and emphasized that the bill would need the President's unambiguous support in order to pass. Defense Minister Sudarsono, who has opposed civilian criminal jurisdiction over the military, has said he would seek clarification from the President before accepting the report.
End Summary.

¶2. (C) Awaluddin's statement came after his telephone call with a State Secretary traveling with President Yudhoyono in Japan. According to Awaluddin, the State Secretary stated that Yudhoyono had "in principle approved the substance of the bill." Defense Minister Sudarsono, who has been representing the government in the DPR along with Awaluddin on this issue, has gone on record several times before the DPR opposing any jurisdiction of the military by civilian courts. Sudarsono asserted that such a move would disrupt the country's defense system and that the country's legal infrastructure was not ready to try military personnel. Specifically, civilian judges were not sufficiently familiar with military conditions. An additional element, we note, which remains unspoken because of its sensitivity, is the fact that civilian jurisdiction over military personnel would in effect subordinate the military to the police, which until 2000 was part of the military structure.

¶3. (C) Sudarsono was unwilling to accept Awaluddin's announcement at face value and told the press he would ask the President directly for an explanation. If the report turned out to be true, Sudarsono said, he and the TNI would seek to find a way to implement the President's decision. Sudarsono noted, however, that the Code of Military Justice, the Criminal Code and the Civil Code had yet to be revised and asserted this should occur before taking this step.

14. (C) The DPR introduced the Draft Bill on Military Tribunals in September of 2005, but until now the legislation had stalled in a special DPR deliberative committee. The special committee, or PANSUS, convened by the DPR to negotiate the bill's provisions, entered into negotiations with the government on the bill in late October 2005, but progress was slow. Embassy contacts reported that while most of the factions deliberating the bill agreed in principle with the concept of trying soldiers in civilian courts, concerns about how the legislation would mesh with pre-existing legislation, coupled with the government's lack of enthusiasm for the bill, handicapped efforts to move the bill forward.

15. (C) The draft legislation would amend relevant parts of Presidential Order number 37/1977, which is the basis for Indonesia's current system of military justice. Much of the DPR discussion revolves around a landmark resolution of the People's Consultative Assembly (MPR) in 2000 (VII/MPR/2000) which set out the major principles for reform of the TNI. Because it is cast in broad strokes, it provides no explicit guidance one way or the other on the question of military justice. The MPR decree directed the military to stay out of political affairs, to uphold democracy, respect the law and human rights and prohibited the military from both seeking political office and voting until 2009, but did not address the question of whether military personnel could stand trial in civilian courts. Proponents and opponents alike of the new measure cite the MPR resolution in defense of their agenda. On the other hand, article 65 of DPR law 34/2004 on

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military reform already provides for the trial of soldiers in civilian courts for commission of general crimes. The necessary implementing regulations, however, have not been issued. Critics of the current legislation, including Sudarsono, argue that this should occur first.

16. (C) Yuddy Chrisnandi, a Golkar legislator and member of the PANSUS on the military tribunal bill told us SBY's support was critical to the bill's passage. He noted that the fundamental objective of the bill - to create a legal mechanism that would allow members of the military to stand trial in civilian courts for civilian crimes - was relatively uncontroversial in the DPR and that lingering concerns could easily be worked out. He said the far more serious obstacle was SBY's failure to endorse the draft legislation. Yuddy said that the President's reluctance so far could be attributed to intense TNI lobbying, and he emphasized that the PANSUS would not move forward with the bill until SBY had endorsed it unambiguously. Yuddy doubted whether such an endorsement would be forthcoming in the near future.

17. (C) Mohammad Hatta, Golkar's DPR faction leader and a member of the PANSUS also had concerns about the bill's prospects. Hatta told us Defense Minister Juwono Sudarsono briefed the PANSUS recently and outlined his strong objections to any move that would strip the military of its authority to bring military personnel to justice. Hatta said Juwono's comments carried considerable weight within the DPR as most legislators viewed the Defense Minister as the country's foremost authority on defense issues. He said that as a result of Juwono's comments, select members of the PANSUS would visit with every territorial command to solicit input on the proposed legislation and listen to concerns.

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